

Supreme Court, U.S.
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APPENDIX

IN THE

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Supreme Court of the United States

DECEMBER TERM, 1978

No. 78-354

STATE OF NORTH CAROLINA,

Petitioner.

v.

WILLIE THOMAS BUTLER,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED AUGUST 30, 1978
CERTIORARI GRANTED DECEMBER 11, 1978

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Supreme Court of the United States

December Term, 1978

No. 78-354

STATE OF NORTH CAROLINA,

Petitioner,

vs.

WILLIE THOMAS BUTLER,

Respondent.

RELEVANT DOCKET ENTRIES

(1) October 24, 1977. Grand Jury Indictment handed down for the crimes of assault with a deadly weapon with intent to kill inflicting serious bodily injury [N.C. Gen. Stat. §14-32(a)], kidnapping [N.C. Gen. Stat. §14-34], and armed robbery [N.C. Gen. Stat. §14-87].

(2) October 24, 1977. Arraignment was held on the above-listed charges, and the Respondent plead not guilty.

(3) November 2, 1977. Judgment of guilty entered upon jury verdict of guilty to each of the above-listed charges.

(4) June 6, 1978. The Supreme Court of the State of North Carolina filed the judgment and opinion reversing the Respondent's conviction and remanding his case to the Superior Court for a new trial.

(5) August 30, 1978. Petition for Certiorari filed by the State of North Carolina.

(6) December 11, 1978. Petition for Certiorari granted.

**NARRATIVE SUMMARY OF THE VOIR DIRE
EXAMINATION CONCERNING ADMISSIBILITY
OF RESPONDENT'S CONFESSION**

**IN THE SUPERIOR COURT, WAYNE COUNTY,
NORTH CAROLINA**

OCTOBER 31, 1977 TERM

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VOIR DIRE EXAMINATION

DAVID C. MARTINEZ

DIRECT EXAMINATION:

My name is David C. Martinez and I am a Special Agent with the Federal Bureau of Investigations and I

have been with them for two years. I am stationed in New York and as to Willie Thomas Butler on May 3rd, 1977, I knew that there was an unlawful flight to avoid prosecution warrant issued for Willie Butler out of Charlotte. We located Mr. Butler's residence at 1225 Sheridan Avenue and arrested him one morning. Six other agents and I went to arrest him and he was on the fifth Floor of the apartment building asleep on a cot in the kitchen when we arrested him.

We knocked on the door, identified ourselves, and stated that we had a warrant for Mr. Butler. The person inside the apartment opened

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the door for us and I do not know who that person was. We were allowed into the apartment and we asked where Willie was and they pointed in the direction of the kitchen and he was the only person in the kitchen. We went in the kitchen and woke Mr. Butler up and told him that he was under arrest by the FBI for unlawful flight to avoid prosecution.

After that, we immediately advised him of his rights as to the Advice of Rights Form that we had and transported him to the New Rochelle Office. We advised him of his rights first at the scene of the arrest and again when we got him back to the office and there we gave him an Advice of Rights form to execute.

As to advising him at the scene of the arrest, I have a small form that I carry in my billfold at all times and this is what I read to him. I read to him:

"Before we ask you any questions, you must understand your rights. You have the right to remain silent; anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questions if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

The only question that we asked him at that time was whether or not he had any weapons in the apartment and he said no. After a quick review of the area within his reach, we found no weapons and then we left the apartment and took him to the New Rochelle Office

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of the FBI.

As to whether any agents asked him any questions about the offense that allegedly had occurred in North Carolina, I was with him in the back seat and there was another agent driving. We tried to avoid asking him any questions concerning the incident until we got back to the office. We did ask him what he had done the night before because we raised quite a commotion at the door. We tried to avoid asking any questions relating to

the commission of the crime in North Carolina until we got back to the office and we did avoid it.

During the trip to the office, he was very quiet and he seemed to accept the fact that we had arrested him and he offered no resistance. He knew who we were and I think he knew what was going on. At the office, Special Agent, Richard Berry and I took Butler up to an interview room and gave him the Advice of Rights form which he read. There were not any papers served on him at any time and the papers on the unlawful flight to avoid prosecution were forwarded to the United States Marshall in New York. I gave him the Advice of Rights form in the room and I observed whether or not he read it. I read it and I don't recall if I read it orally to him.

I asked him whether or not he could read and when he replied that he could read, I gave it to him. He read it. At the bottom it has a small statement advising him that it is a waiver of rights and if he wanted to sign it. He said the he did not want to sign any paper but he did consent to talk to us. He consented to talk to us without his lawyer present and if you showed me one of the Advice of Rights forms, I would be able to recognize it. I have the original form with me.

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At this point, State's Exhibit on Voir Dire No. 1 was marked and handed to the witness.

I recognize State's Exhibit No. 1 and it is the Advice of Rights form provided to Mr. Butler. Special Agent Berry was with me when I provided this form to Mr. Butler and it was around 7:18 a.m. I asked Butler if he read the form and he nodded his head and said that he had. I asked him if he understood it and he said that he did. As to signing it, he said that he didn't want to sign this form and that he didn't want to sign anything. We told him that it was not mandatory that he talk to us and that he didn't have to sign the form but that we would like for him to talk to us. He said "I will talk to you but I am not signing any form."

We had not asked him any questions about what had occurred in North Carolina before he said that he would talk to us. The reason for that was that we had communications back in the office that gave us a little more detail about what had transpired in North Carolina.

I witnessed the form after he had refused to sign it along with Special Agent Berry. I made the notification that the defendant refused to sign the form.

At this point, State's Exhibit on Voir Dire No. 1 was offered into evidence and was received into evidence.

We asked him some questions about what had occurred in North Carolina after he told us that he would talk to us. We asked him first of all if he had participated in the armed robbery and he stated that he was there but that he did not actually participate as such

in the armed robbery. We asked him to explain a little further and he stated that he and an accomplice had been drinking heavily that day

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and were walking around and decided to rob a gas station. They came up to a gas station where the attendant was locking up for the night and walked inside the station. He stated that the fellow with him pulled out a gun and told the gas station attendant to get in his car. He then said that the gas station attendant tried to run away and that his friend shot the attendant. At this point, Mr. Butler stated that he ran away from them and didn't look back. He stated that he ran to a bus station where he caught a bus to Virginia and that in Virginia he caught another bus to New York where he had been until he was apprehended that morning.

We asked him if the other person was someone by the name of Elmer Lee and we had had communications from our Charlotte office saying that Elmer Lee had also been involved. Butler said that Lee was there. Butler said that this occurred in the evening and I don't remember whether he said a time or not. He did not say whether the gas station attendant ever got into the car and he did not say where the attendant was when he attempted to flee and was shot. He did not tell me anything else that I recall right now.

Before we talked to him or during the time that I was talking to him, neither I nor any of any companions

made any promises to the defendant in order to get him to talk with us. Neither me nor any of my companions threatened him in any fashion to get him to talk with us and I did not offer him any hope of reward or inducement to get him to talk with us. I did not use any sort of misrepresentation or trickery or fraud of any type to get him to talk with us and I did not use any sort of force or coercion to get him to talk with us. He was in possession of his mental and physical faculties at the time that I arrested him and transported him to my office and he did not appear to be under

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the influence of any alcohol or narcotic drugs during this period of time. He appeared to know where he was and what was going on about him and he appeared to respond to the questions in a sequential fashion.

CROSS EXAMINATION:

I do not recall the day that we went to arrest him and as to whether it is May 3rd, 1977, that is the date if that is the date on the 302. We were at the apartment building at 6:00 in the morning but we did not go to the door until 6:30 so that we could deploy our people. We put people on the roof and back on the fire escape and covered all of the routes of escape before we went to the door. I had been there the day before looking for Mr. Butler and we had information that he might be in that apartment building and we went and tried to see if we could locate him. I knew what he was wanted for before and it was for armed robbery and there was a federal warrant out for unlawful flight to avoid prosecution.

As to the commotion at the door, that was the noise that we ourselves made and we were knocking on the door and announcing ourselves. There were seven agents with me in all and the agent in charge was Robert Gast the assistant Special Agent in charge of the office. Mr. Butler accompanied me in the car and I was the Case Agent. Mr. Berry had been with me before and he has been with the Bureau for twenty years.

I was in charge of the interrogation and Mr. Butler did not make any statement when I advised him of his rights orally back at the apartment. He was startled because we had awakened him while he was asleep on the cot. He was a little startled when he woke up to find weapons shown.

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The apartment was rented out to a person by the name of Brooks as I recall and there was an older gentleman and two ladies there at that time. I did not make any recording of his statement at the time that I talked to Mr. Butler at the office and showed him the form which he refused to sign. There was not anyone else present besides Mr. Berry and I and when we started talking to him, we explained that he was wanted for armed robbery in Goldsboro. We also explained that there was a federal warrant out on him for unlawful flight to avoid prosecution and he asked us a few questions on the unlawful flight warrant. We explained to him that it was a federal warrant and that in most cases that charge would be dropped once he is

returned to North Carolina. That would be in the discretion of the United States Attorney and we asked him about his participation in the armed robbery here. We did not describe the armed robbery that we were talking about in detail at first and we asked him if he had been in any armed robbery in Goldsboro. He didn't have an answer and he just kind of sat there and we asked him if he had been involved in an armed robbery of a gas station. We said that we thought that he had been involved and he said "Well, I was there but I really didn't do anything." I can't remember his exact words but the implication was that he was along with someone else who had done it.

As to whether I ever learned what armed robbery we were talking about and whether or not it was the same one, I did, and as the interview went on, he came out with some details. We came out with more of what we knew about it and about the gas station attendant having been shot. We also came out with the fact that the filling station was in Goldsboro and that there was another person by the name of Elmer Lee and that he did know Elmer Lee. The question, "Do you know Elmer Lee?" was

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asked and he answered the first time that it was, he wasn't sure, or no, he didn't and then he went on relating his story and then he said "Well, I know Lee." I reduced

the statement that he gave me to writing after we got back from taking him to the Southern District. I did not ever ask him to read it and I did not ever see him again.

He did not say anything when I advised him of his right to have an attorney and he just sat there and listened. I repeatedly asked him if he understood his rights and he said that he did. He stated that he would not sign the paper and I did not tell him that if he would talk to us that I would get the unlawful flight charge dropped. We had already explained to him that that was usually done in these cases. I did not ever talk to him about it being easier for him if he would talk and I don't see how it would be easier for him at all.

As to the United States Attorney being advised of the statement he made, the United States Attorney usually gets a five-day report that we make out within five days after the arrest. I do not know whether the charge of unlawful flight has been dropped and I assume it has, but I don't know. I do not recall Mr. Butler ever asking what race the gas station attendant was and if anything we asked him that.

The following is set forth in question and answer form for purposes of clarification:

Q. All right, sir. Do you recall stating to him: "Do you know what color the gas station attendant was?" and he said "white; I don't know of any black filling

station owners;" do you remember that statement being made?

A. No, sir.

As to any statement being made concerning

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the race of the man that was robbed, as I recall, I asked him if the gas station attendant was white or black and he answered "white." I do not recall asking him how he knew that the attendant was white and I do not recall him making the statement that he didn't know of any black filling station owners in North Carolina. I am saying that I don't remember him saying that at all.

Mr. Berry, Mr. Butler and I were present in the room and as I recall we got through with Mr. Butler around noon at the Southern District and it usually takes about an hour to get back to the office. I reduced it to writing within about three hours after I got back to the office. I don't know if a copy is here, but I do have the original with me. I wrote the following down at that time:

"Willie Thomas Butler, 1225 Sheridan Avenue, Apartment 5-D, Brooklyn, New York. After having been advised of the identify of the interviewing agent, the charges for the cause of his arrest and his rights as found in AFD 395, Advice of Rights Form, voluntarily provided the following information concerning the charges against him: Between ten and eleven

p.m., Butler and another individual whom he identified as Elmer Lee were drinking heavily and walking together in Goldsboro, North Carolina, when Lee asked Butler if he wanted to rob a gas station. Butler agreed and they walked over to a gas station where the attendant was locking up for the night. Lee pulled a handgun and told the attendant to get into his own car. The attendant stated words to the effect that he did not have any money. Lee again ordered the attendant to get into his car. The attendant attempted to flee and Lee shot the attendant. Butler advised that at this time he ran from the scene to the bus station in Goldsboro, North Carolina, where he got on a bus and rode to Virginia. Upon arriving in Virginia, Butler bought a

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ticket to New York where he has been since the incident occurred. He has been staying with friends at 1225 Sheridan Avenue, Apartment 5-D, Bronx, New York."

As to whether Butler identified the other person as being Elmer Lee or as to whether I identified the other person as Elmer Lee and asked Butler, Butler did it, that is, he identified the other person and named Elmer Lee to me first.

As to the case file concerning the incident, all we had at the time was a teletype from our Newark, New Jersey office giving us a brief description of the crime that had been committed in North Carolina and advising us that warrants had been issued for Mr. Butler. The brief description mentioned Elmer Lee and it had that name in there. After he made that statement, we just engaged in light conversation about what he had been doing and where he had been the night before. As I recall, he said that he had been partying the night before and he did not appear to have an odor of alcohol on his breath.

At this point, the following transpired:

COURT: I understood Mr. Martinez to say on direct examination that he read him the rights form and he consented to talk with him without a lawyer being present?

MR. JACOBS: Yes, sir.

COURT: On cross examination, I understood him to say that he didn't say anything when he was asked about a lawyer. I may not have heard it properly.

MR. JACOBS: I think if he could come back to the stand, we could straighten it out. He said he was talking about two separate occasions.

COURT: I understand our Supreme Court has

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said that if there is not a waiver of attorney, the questioning is invalid.

REDIRECT EXAMINATION:

I heard the court's question about the two different statements and when we first arrested Mr. Butler in the kitchen, we advised him of his rights orally. At that point he just listened and he did not question us about it at any time. We allowed him to get dressed and transported him to our New Rochelle office and that is when I read him the short form. He did not have a response when we advised him of his rights relative to an attorney. We advised him of his rights and then we told him to get dressed and we transported him to the New Rochelle office. When we got to the office, we gave him the form which you have seen and at that point we asked him whether or not he would like to sign the form. He said that he would not and I said "Well, you don't have to talk to us but we would like for you to talk to us; if you want an attorney, one will be appointed for you." I didn't ask him if he would sign the form, he advised us that he did not want to sign it but that he would speak to us. He told me that he would speak to me without a lawyer and as the form said he had the right to an attorney. He had the right to have an attorney with him during questioning and he had the right to consult an attorney at any time. We asked him if he understood his rights and he said that he did and we asked him if he would speak to us. I can't remember his exact words but he did say that he would speak to us but that he would not sign the form.

The following is set forth in question and answer form for purposes of clarification:

COURT: The point is understanding his rights, did he ever say unequivocally "I will waive my rights to an attorney," or

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anything that would amount to that and then say, "Knowing that I am entitled to a lawyer to be here, I will not require the attorney to be present at this time and I agree to answer your questions"? Did he ever specifically say he did not want his lawyer and that he would answer the questions without a lawyer present?

A. He never told us that he did not want the lawyer present. He never told us he did want a lawyer present. We explained to him that he could have a lawyer; that one would be appointed if he so desired. At this point we asked him, "Will you speak to us knowing full well that you do have these rights?"

COURT: And he said what?

A. He said "I won't sign the form. I will talk to you but I won't sign the form." My impression was that he did understand his rights. He did not necessarily want the lawyer but he would refuse to sign any type of paper at all.

COURT: That was your impression that he did not say that?

A. He never came out with the specific words like you did.

COURT: Anything to that equivalent? As I say anything equivalent to that. The way I said it was the most understandable I suppose: unequivocal way he said it. It can be said in many different ways but if he didn't say it in any way. Anything further?

RECROSS EXAMINATION:

I am not assuming by his silence that he did not want a lawyer and it was through his answer to us saying after he had read the form and after he had been advised orally of his rights knowing full well that he had the right to an attorney and knowing that this would hold through, hold true throughout the

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interview that he would speak to us and that he refused to sign the form. The only refusal I understood that he refused to sign the form. I did not read that he refused to sign the form and Butler did not request a lawyer later on in my presence. I wasn't present at the extradition hearing and there was a removal hearing. He had Legal Aid lawyers for that hearing and as to whether I recall him making the statement that he wasn't going back to North Carolina voluntarily and that he wanted a lawyer, I recall him saying that he didn't want to go back to North Carolina.

He never asked me for any attorney and I never told him that I would get him an attorney for his removal hearing. I told him one would be appointed for him and the United States Magistrate of the Southern District appoints the Legal Aid lawyer for him. As to telling him that an attorney would be appointed for him at that time, he said that would be all right.

As to whether he made a statement or as to whether I just handed him the piece of paper and asked him to read it, when I got back to the office I handed him the form. I asked him if he could read and write and he said that he could. I told him to read this and he took it and read it and then he handed the form back to me. I asked him if he understood it. He had had eleven years of education as I recall, he provided us with that information during the interview. I recorded that piece of information and I have it with me here in the courtroom. After he provided us with that information, we asked him if he had any questions concerning the charges or the interview or anything at all that we might be able to answer for him. He just made the state "No, I won't sign it but I will talk to you." In the waiver of rights, it says "I don't want a lawyer at this time." Had he signed that he would have waived the lawyer

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lawyer unequivocally.

The following is set forth in question and answer form for purposes of clarification:

COURT: But you cannot say without your assuming that he waived an attorney by what is written down here that he consented to talk without a lawyer present; that was a conclusion that you drew from the fact that he did not specifically request an attorney, is that right?

A. Not quite, your Honor. What made me believe that he did not want a lawyer present at that time was the fact that he was relating the story concerning the charges against him at that point. If he had wanted an attorney present with him, he wouldn't have said anything.

COURT: Well, that is a mental process on your part with you concluding that he would not have wanted an attorney or he wouldn't have started talking, is that what you're saying?

A. Basically. After being on several arrests and seeing several people decide not to sign the form and decide not to say anything until they got a lawyer.

FINDINGS ON VOIR DIRE EXAMINATION

The State proceeded to offer evidence on a voir dire hearing relative to the admissibility of certain statements made by the defendant, William Thomas Butler to David C. Martinez, Special Agent of the Federal Bureau of Investigation, and the Court makes the following findings of facts:

That on or about May 3, 1977, Agent Martinez, together with other agents went to a 5th floor

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apartment building in the Bronx, New York, and knocked on a door and gained entrance to the apartment; that the defendant, Butler was present in the apartment and was placed under arrest at that time for unlawful flight to avoid prosecution, the agent having information at that time that the defendant had allegedly committed an offense of armed robbery in the State of North Carolina; that the defendant was advised of his rights orally at the time of the initial arrest in New York City, and was advised that he had the right to remain silent; that anything he said could be used against him in court, and that he had the right to talk to a lawyer for advice before any questions were asked but if he could not afford an attorney that one would be appointed for him before any questioning; that if he decided to answer questions without a lawyer present that he could stop at any time and would have the right to have an attorney appointed for him at that time.

Having been warned of his rights as required by the Miranda Decision, the defendant made no statements nor was he asked any questions at the time of the initial arrest of the defendant; that the defendant was

subsequently transported by Agent Martinez to the New Rochelle, New York office of the FBI where the defendant was taken to an interrogation room where he was presented with State's Exhibit 1 on Voir Dire, the paper writing entitled "Your rights;" that it had been previously determined by Agent Martinez that the defendant had an Eleventh Grade Education and that he could read and write; that State's Exhibit Number 1 on Voir Dire indicates the rights as shown thereon as follows:

"Before we ask you any questions you must understand your rights. You have the right to remain silent; anything you say can be used against you in Court; you have the

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right to talk to a lawyer for advice before we ask you any questions and to have him with you, during the questioning; if you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

The form also provides in the middle thereof the designation "Waiver of Rights." The Waiver reads:

"I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me."

Having presented this form entitled "Advice of Rights," and subdivision "Your Rights" and "Waiver of Rights," the defendant proceeded to read the form and upon conclusion of his reading the form indicated that he did not desire to sign the form but that he would make a statement to the agent which he proceeded to do as appears of record.

Based upon the foregoing, the court is of the opinion and concludes that the statement made by the defendant, William Thomas Butler, to Agent David C. Martinez, was made freely and voluntarily to said agent after having been advised of his rights as required by the Miranda ruling, including his right to an attorney being present at the time of the inquiry and that the defendant, Butler, understood his rights; that he effectively waived his rights, including the right to

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have an attorney present during the questioning by his indication that he was willing to answer questions, having read the rights form together with the Waiver of Rights; that the statement made by William Thomas Butler following the agent's advising him of his rights was voluntarily made at a time when the defendant understood his rights and that no promises or offers of leniency nor threats or pressure or coercion of any type has been exerted against the defendant, and that any statement or confession so made was freely and voluntarily given;

Based upon the foregoing, the court is of the opinion and rules as a matter of law that any statement made by William Thomas Butler in the presence of Agent David C. Martinez, after having been advised of his rights may be received in evidence in the trial of this action.

EXCEPTION NO. 1

NARRATIVE SUMMARY OF THE TESTIMONY OF FBI AGENT DAVID C. MARTINEZ IN THE PRESENCE OF THE JURY

IN THE SUPERIOR COURT, WAYNE COUNTY,
NORTH CAROLINA

OCTOBER 31, 1977 TERM

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DAVID C. MARTINEZ

My name is David C. Martinez and I live in Stamford, Connecticut. I am a Special Agent with the Federal Bureau of Investigation. I had occasion to see the defendant in the area of New York and I am a special agent with the FBI and I have been so employed for two years. I am assigned to the New York office and on May 3, 1977, I had occasion to see Willie Thomas Butler. I arrested him on that date and he was in an apartment at 1225 Sheridan Avenue in the Bronx, Apartment 5-D. We went to the building about 6:00 in the morning and arrested him at 6:30 in the morning. We had a warrant for him from Charlotte for unlawful flight to avoid prosecution and the federal warrant had been issued out of Charlotte because of a request for help from the local police saying that they had reason to believe that he had fled the state to avoid prosecution and that they would extradite him if he were found. An FBI office is in Charlotte.

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We got to the building in the Bronx at 6:00 and went into the apartment at 6:30. We were allowed in by a person that was living at the apartment and we knocked on the door. I had identified us as FBI Agents and stated that we had a warrant for Butler's arrest. We went inside and the defendant was asleep on a cot in the kitchen and we woke him up. We told him he was under arrest and that there were warrants outstanding for him.

We advised him of his rights and I have a card that I carry with me that I have here. The card reads as follows: Before we ask you any questions you must understand your rights. You have the right to remain silent; anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford to employ a lawyer, one will be appointed for you before any questions if you wish. If you decide to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

After this, we transported him to the New Rochelle office of the FBI which was about six miles. It took about 15 minutes to get there and he was awake and unharmed when we got there. He had all his faculties and he appeared to know who I was and what was going on about him. He appeared to be in possession of his mental and physical faculties and he did not appear to be under the influence of any alcoholic beverage or narcotic drugs.

We interview him and before that we provided him with an advice of rights form which is known to us as a FD-395. That form has exactly the same wording along with another sentence which is a waiver. I asked him to read that form and I asked him if he could read and

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write. He said that he could and I provided him with the form and asked him to read it. He took the form, read it, and delivered it back to me. I asked him if he read it and he said that he did. I asked him if he would sign the form and he said that he would not sign the form but that he would speak to us. As to whether we asked him any questions about his presence in Goldsboro on December 28th, 1976, I can't remember the exact date. I asked him about being in Goldsboro and about being involved in an armed robbery and he stated that there was an armed robbery that he and Elmer Lee had committed. He said that they were walking one evening after having had several intoxicating beverages and that they were drinking heavily and walking along. I cannot recall the exact time that he said that they were taking this walk and I have it written down if I may refresh my memory. It was between 10:00 and 11:00 p.m.

Q. And what did he say Lee asked him?

MR. BRASWELL: Objection

COURT: Overruled.

A. Lee asked Butler if he wanted to rob a gas station.

EXCEPTION NO. 7

The defendant told me that he agreed and they walked over to a gas station where an attendant was

locking up for the evening. He said that Lee pulled a handgun and ordered the attendant to get into the attendant's car and he said that the attendant said that he had no money. He then stated that the attendant made a break for it and that Lee shot at the attendant. Mr. Butler said at this point, he ran from the scene to the bus station and boarded a bus for Virginia and upon arriving in Virginia he boarded another bus into New York City where he had been since the incident occurred. He said that he had been staying at 1225 Sheridan Avenue since the incident and he did not say where the attendant was at the time the attendant was shot. He did not tell me anything else about the incident and I do not have any idea how long he was in New York after I arrested him. I have not seen him again since this courtroom and I see the man in this courtroom that I interviewed in New York after arresting him in the Bronx. He is sitting at the defense table.

CROSS EXAMINATION:

The unlawful flight prosecution allegedly grew out of an incident that occurred in Goldsboro and there was a warrant outstanding against the subject that was suspected of being in an armed robbery. As to whether the FBI became involved because of the fact that there had been an unlawful flight across state lines, it was through a request from the police department and in that request they must provide any background information concerning the suspect and that they will extradite him from whatever state he is found in back to the state that wants him and providing information and anything else that will be of assistance and must also show that they suspect him of crossing state lines and

where he went. They must also state on what they based that and they give a summary of what someone has told them as to what allegedly occurred such as somebody being robbed on a certain night and being shot and as a result someone has fled the state and is believed to be living in your area.

They give names and places and dates. I did not have all that information when I went to arrest Mr. Butler and the only information I had was through our Newark, New Jersey office which had sent a teletype to New York advising us that they believed him to be in the Bronx and provided us with an address. It had a very brief description of the crime and I do not have it with me. The description

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related that it involved a service station and that an attendant was shot and it gave the name of Elmer Lee as being one of the ones that was suspected. One of the names was Butler.

We determined who lived there at the time we went around to the apartment and there was a family by the name of Brooks living in the apartment. At the time of the arrest there were four people in the apartment which was two males and two females. We did not ascertain the age of the people and we only took Mr. Butler and left the other people there. I saw the other three people and I would approximate the age of the other male as in his mid-fifties and the two ladies at

close to their fifties. Butler did not at any time tell me that his mother lived there and I asked him. He did not tell us that his mother was there and we did not determine whether she was there.

We orally advised him of his rights at the apartment and he did not make any statement. He did not say anything like that he would talk to us or that he would not talk to us. As to what he did when we read him his rights, first of all, he was startled to find us there when he woke up and his first thought I would assume would be not to do anything that would jeopardize his welfare. He did not resist in any manner and as to whether we waited for him to answer whether or not he understood his rights, we read him his rights and did not ask him anything at all. At the bottom of the form it states "You must understand these rights" but I only read him his rights and I did not read the waiver. When I ask him he said he did.

As to the question, "Do you understand that you have the right to have an attorney" and as to the statement "If you cannot afford one, we will see that one is appointed for you,"

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he had no response at all. From there we escorted him to the New Rochelle office and immediately upon arriving there, we placed him in an interview room. It is known as an interview room and it has been known to be used for interrogation but we preferred to use

interview. It has always been used that way and as to whether it doesn't sound as forceful, it could be. We talked to him in that room and I told him about the unlawful flight warrant. I told him that the charge of unlawful flight to avoid prosecution is normally dropped if he went back to North Carolina. This was before I talked to him or before he made any statement to me.

After that I handed him this form that had the rights on it and I believe it has been entered as an exhibit. It reads as follows:

"Interrogation — Advice of Rights. Your rights. Before we ask you any questions, you must understand your rights. You have the right to remain silent; anything you say can be used against you in court; you have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning; if you cannot afford a lawyer one will be appointed for you before any questions if you wish. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. Waiver of Rights: I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I don't want a lawyer at this time. I understand and know what I am doing; no

promises or threats have been made to me and no pressure or coercion of any kind has been used against me."

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He did not sign that and I previously asked him if he could read or write and he said that he could. I asked him had he read that. As to whether I stated earlier that after he read that, he just said that he wouldn't sign it, he did refuse to sign it. As to whether I have not indicated at any time that he said "I understand it" I believe he did.

The following is set forth in question and answer form for purposes of clarification:

Q. My question is directly Mr. Martinez: did he ever state to you "I understand that; I know what it is but I'm not going to sign it;" did he ever state that in those words?

A. His words as best as I can recall when we asked him "do you understand the rights?" He nodded his head. He didn't say a word. We asked him, "Will you sign the form?" He said "I won't sign the form; I will talk to you but I won't sign the form."

At the time he refused to sign the form and he gave me a statement immediately after that. As to whether this is the time that he told me that he had been with Elmer Lee and that he had been walking around drinking and that they went to the station and that he

didn't take part in any robbery but that Lee shot the man and that he ran away, he said that Lee shot at the attendant but he didn't tell me that Lee hit the man. He did not tell me that Lee hit the man but that Lee shot at the man.

I asked him if he knew what color the service station operator was and he replied that he was white and he did not say "I am sure he is probably white because I don't know any black filling station owners in North Carolina." He did not ever make that statement that I remember and I can't recall asking him "Well, how do you know he was white?"

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He never made the statement "I assume he is white if he is from North Carolina" that I recall. He refused to sign this and we asked him some more questions to provide background information. He did that and I did not ever go back and ask him to sign that again.

I transcribed what he stated to me there into a written statement later that afternoon and I did not present it to Butler for his signature. I did not read it back to him and ask him if it was correct.

We took Mr. Butler to the Southern District about noon that day and to the best of my recollection, I started transcribing what he said to me about 3:00 that afternoon. As to whether I dictated it to someone else, I wrote it in the form of a rough draft and handed it to a

stenographer. I wrote it and I made some notes while he was talking. I have those and you may see them and I also have the arrest log. This is what I wrote down at the time that I was talking to Butler and I did not put any date or any time on it. I did not ask him to sign that and I did not show it to him at any time.

The following is set forth in question and answer form for purposes of clarification:

Q In there did you use the personal pronoun as Butler is talking, that "I and Elmer" or "Elmer and myself" or "Elmer Lee and me" or did you use it as the subject?

A. The subject.

I did not know who Elmer Lee was at the time that I was talking to Butler but we knew that another person by that name had allegedly been involved in the armed robbery. I did know the name but I didn't know him personally. He identified the person as being Elmer Lee and we more or less verified it to him in that we stated words to the effect that

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we knew Elmer Lee was there. He had no response to that.

We did not at the time that we were interviewing him recite to him what had occurred and ask him if that is what occurred and we did not at any time show him or ask him to sign any statement indicating that he had been involved in this matter. The only thing I asked him to sign was the advice of rights form and he never did ask us for a lawyer. As to his getting a lawyer later on in New York, I know that one was appointed for him for the purpose of the identity removal hearing.

I did not meet Mr. Stocks until I got to North Carolina and we did not advise anyone that I had taken a statement from that man. It is normal procedure to provide the office of origin, which is Charlotte in this case, a five-day arrest record. I forwarded a report to Charlotte within five working days after the arrest. As to whether I indicated at that time that he had failed to sign his rights and would not talk to me, no statement was made and I just put down there that the subject was arrested and the things that I have down there now.

Mr. Butler never denied being in Goldsboro on December 28th, 1976 and he stated that he was involved in the robbery. He did not tell me the location and I do not recall that I asked for the location. I was not aware that Lee was involved in more than one robbery at the time and at the time I did not know the location. It was not provided from the information and the town of Goldsboro was provided but not the street address. I told him that it happened in Goldsboro and he listened.

As to whether he ever stated to me that he didn't want a lawyer, he didn't use those

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words. As to whether he ever stated to me that he wanted to talk to me and that he would give me a written statement, there was never any mention of a written statement, but he did state that he would speak to us. I never afforded him an opportunity to sign what he said. Special Agent Richard Berry witnessed this and he did not attempt to get Butler to sign any statement in my presence. I did the talking to Butler and Berry asked him some questions. I was in there the entire time and Butler responded to Mr. Berry's questions. The statement he actually gave us was on continuous statement. We let him speak and when he finished speaking, Mr. Berry and I would ask him questions like was the attendant white or black. I think Mr. Berry also asked him if he would sign the form.

As to why we asked him if the attendant was white or black, if he had told us the details of the robbery, as I recall, there was no mention made as to whether or not the attendant was white or black in the statement. We wanted to have a statement concerning the other man to verify whether or not it was the same armed robbery and I did not know whether the man was white or black. As to verifying it, I could phone Charlotte and at the time I didn't know what I was verifying. Later on I did not ever have an occasion to go back and attempt to ask Butler any further questions and I did not ever see him again.

I did not ever make any attempt to get him to sign the statement in the future and he was fingerprinted after I talked to him and the fingerprints were not forwarded to Charlotte. The fingerprints were not forwarded to me from Charlotte at the time. As to knowing that this was Willie Thomas Butler, he told us that he was Willie Butler at the time of the arrest. I had a photograph with me and

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I do not have it with me now. I recall what the photograph looked like and I believe it is the same one that was in the photospread. It was a facsimile of the photograph which is something like a xerox or a teletex.

Mr. Butler made no attempt to resist at all and I do not know of any unlawful flight charge on a person known as Elmer Lee. I was not aware of Lee's whereabouts on May 3, 1977 and I do not recall that I told Butler at the time that I did not know where Lee was or whether or not Lee had been arrested. He did not ask anything about Lee and he may have denied knowing Lee.

REDIRECT EXAMINATION:

As to interviewing the defendant, we did ask him questions and once he began speaking we just let him speak. We wrote down exactly what he said with the exception of putting in the word "subject" instead of

saying "I". The notes that I showed to the defense counsel were the notes that I took while the defendant was speaking to me and before I made my notes and took the statement from him, I had let him read his rights. I had indicated that I had allowed him to read the rights and he began reading the rights at 7:18 a.m. He made his statement about three or four minutes after reading his rights.

At this point, State's Exhibits 8 and 9 were marked for identification.

State's Exhibit No. 8 is the waiver that the defendant refused to sign. Richard Berry was with me the full time. State's Exhibit No. 9 is my original interview notes and they are the ones that I took down as the defendant was telling me what had occurred. I did not threaten him in any fashion, I did not promise him anything and I did not use any force or coercion or trickery to get him to talk to me. He appeared to be in a good

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state of mind when he was talking to me.

At this point, State's Exhibits 8 and 9 were offered into evidence and received into evidence.

RECROSS EXAMINATION:

Mr. Butler was talking to me in a hesitant, low-tone of voice. As to whether we had to ask him questions to get him to go on, it was not to any great degree. We did

ask him a few questions and he seemed to be hesitant at times and we asked him to go on and that we were listening. We said words to that effect and he would continue talking. At this time, we were writing down what he was saying and I don't take shorthand. I wrote it down in longhand. As to whether I indicated anywhere in there the questions that I would ask him, there are no questions in there but I did ask him questions during that period of time.

The following is set forth in question and answer form for purposes of clarification:

Q Can you tell by looking at that what he said in response to questions or whether or not it was a question that you would ask him and that he would nod his head or indicate yes or no or what he would do?

A. This is my memory.

Q. By memory?

A. Yes, sir.

I had it written down at the time that he finished talking and I did not hand it to him. I asked him if he could read but I didn't ask him if he could read that. I did not let him see that and I did not ask him to sign it nor did Mr. Berry ask him to sign it. We folded it up and put it in the exhibit covers and they go into the file. I did not have those in there at the time and I put them in

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the notebook and carried them with us. At that time a teletype immediately went out advising them to discontinue and investigations and that there was an apprehension of Butler. I didn't state on there that he had made a confession.

REDIRECT EXAMINATION:

I had a brief sketch of the crime from the New Jersey office and when I first started the interview with Butler, to the best of my recollection, I had a teletype from Newark. I didn't know about Butler's whereabouts until he told me and I did not know at the time that I first started talking to Butler that he and Lee were drinking heavily that night and walking in Goldsboro. I did not start talking to him that Lee asked Butler if he wanted to rob a gas station. I did not know that they had walked over to a gas station at that time and I did not know that an attendant was locking up the station when they walked over there. I did not know that Lee had pulled a handgun and that he had told the attendant to get into the car. I found these things out because Butler told me. I did not know the attendant had told Butler that he didn't have any money. I did not know at that time that Lee ordered the attendant again to get in his car. I found that out because Mr. Butler told us and I did not know that Mr. Butler ran from the scene and got a bus until he told me. I did not know that he took a bus and went to Virginia and I did not know that he had ever been to Virginia and I did not know that he bought a ticket in Virginia for New York City.

CERTIFICATE OF SERVICE**RECROSS EXAMINATION:**

It is not a practice for us when we are interviewing a suspect to recite facts back to him and what he doesn't know fill in the blanks and see whether or not we can get the man to agree to anything and I have never done that. I have never been in an investiga-

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tion in which I knew part of the facts and tried to get a complete story by saying "Isn't this the way it happened?" but I have heard it done by police officers. I have not heard it done by other agents. I had not been asked to see what I could obtain from this man and it is a normal procedure to interview anybody when we arrest them. I didn't give him a shorthand knowledge of what my information was at the time

**JUDGMENT AND OPINION
OF THE
SUPREME COURT OF NORTH CAROLINA**

The Judgment and Opinion of the Supreme Court of North Carolina is located in Appendix A of the Petition for Writ of Certiorari.

I hereby certify that I am Assistant Attorney General for the State of North Carolina; that I have served copies of the within APPENDIX by depositing copies of same in the United States mail at Washington, D.C., first class postage paid, addressed to:

Mr. R. Gene Braswell
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This 25th day of January, 1979.

/s/ _____
DONALD W. STEPHENS
Assistant Attorney General

*COUNSEL FOR
THE STATE OF NORTH CAROLINA,
Petitioner*